

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

CHRISTOPHER MIDGETT, individually and  
on behalf of similarly situated persons;

Plaintiff,

vs.

WERNER ENTERPRISES, INC.,

Defendant.

**8:18CV238**

**ORDER**

This matter is before the Court following a hearing on August 19, 2022, on defendants' motion to dismiss the Opt-In Plaintiffs. Filing No. 166. The Court notes that this case has been pending for over four years. There have been at least seven progression and amended progression orders. The parties continue to battle over discovery, mostly regarding Opt-In Plaintiffs which were chosen by the Defendant. The Court having considered all the arguments finds as follows:

1. For the reasons discussed during the hearing, defendants' motion to dismiss Opt-In Plaintiffs, Filing No. 166, is denied.
2. Opt-In Plaintiffs who affirmatively chose not to provide any discovery may be deemed to have opted out of the class upon application to the trial judge not less than thirty (30) days prior to the close of non-expert discovery.
3. Trial in this case is set for 9 days beginning October 30, 2023.

4. Further progression of this case shall be set by the Magistrate Judge. The parties shall meet and confer to submit an amended proposed progression order for the Magistrate Judge's consideration on or before September 2, 2022. The order should begin with the Plaintiff's motion for class certification to be filed on or before September 16, 2022. The amended progression order shall work backwards from the October 30, 2023 trial date to effectuate appropriate discovery deadlines, class certification briefing, expert designations, expert discovery, information exchanges, class certification and motion practice.

IT IS SO ORDERED.

Dated this 19th day of August, 2022.

BY THE COURT:

s/ Joseph F. Bataillon  
Senior United States District Judge